

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2795 OF 2005

Brihanmumbai Union of Journalists & Anr...Petitioners
Versus
The Indian Express Newspapers
(Mumbai) Ltd. and Ors. ..Respondents

Ms Jane Cox for petitioner
Mr.D.D.Madon, Sr. Counsel with Mr.Vinayak Shete i/b
Poorvi Kamani for respondent no.1

WITH
WRIT PETITION NO.2664 OF 2005

Indian Express Newspapers (Mumbai)
Ltd. & Ors. ..Petitioners

Versus

Brihanmumbai Union of Journalists & Anr...Respondents

Mr.D.D.Madon, Sr. Counsel with Mr.Vinayak Shete i/b
Poorvi Kamani for petitioners
Ms Jane Cox for respondents

CORAM : P.V.KAKADE, J.

DATE : 5TH DECEMBER, 2005

P.C.:

1. Heard the learned counsel for both the parties in both the petitions which arise out of common interim order dated 1.10.2005 passed by Member Industrial Court, Mumbai allowing the application for temporary relief in Complaint (ULP) No.415 of 2005 filed by the Brihanmumbai Indian Journalist and one Harshad Joshi, Journalist,

Member of Complainant no.1 against the Respondent - Indian Express Newspaper Mumbai. The impugned order shows that the application was allowed and transfer order dated 5.8.2005 transferring the complainant - Harshad Joshi from Mumbai to Ahmedabad was stayed till final disposal of the Complaint.

2. It is to be noted that the Writ Petition No.2664 of 2005 is admitted and ad-interim relief is granted in terms of prayer clause (b) of the Petition. The other Petition being Writ Petition No.2795 of 2005 is fixed for admission, however, since both the Petitions arise out of common order and the order which is being passed would be in respect of expeditious hearing of the pending Complaint, it is not necessary to admit the Writ Petition No.2795 of 2005 which can be disposed of by direction of this Court.

. The matter pertains to transfer of Harshad Joshi, an employee of Indian Express, who has challenged his transfer from Mumbai to Ahmedabad alleging that the transfer order dated 5.8.2005 was illegal as well as malafide. The bone of contention was that he has joined the respondent newspaper in 1983 as a proof reader. He

was posted at Mumbai and was employed in Samkaleen, that is in Gujarati paper division of the respondent company. The Respondent company wants to close that division. However, the permission would be necessary under Section 25(0) of the Industrial Disputes Act, 1947 for effecting the closure because of the functional integrity and because the number of employees exceeds 100.

. On this background the complaint came to be filed in respect of the Order regarding transfer on the ground that it was illegal and malafide and application was made for Stay of the order pending adjudication of the complaint. After hearing both the parties, the Member Industrial Court, Mumbai came to the conclusion that there was prima facie reason to believe that the transfer order was illegal, and therefore, the impugned order came to be passed to Stay the order temporarily. The Union of Journalist as well as Mr. Harshad Joshi have preferred Writ Petition No.2795 of 2005 against the order on the ground that there are malafides apparent from the record involving act of the Respondent-Newspaper. However, in this regard it must be noted that the impugned order is passed in their favour and therefore, it cannot lie in their mouth that

the issue involved has to be determined in the Writ Jurisdiction of this Court regarding which the Petition is filed against the interim order. Moreover, the issue of illegality and malafides has to be determined by the Industrial Court on final adjudication of the Complaint and therefore, it is not proper for this court to make any comments on that aspect though the learned counsel for the petitioner brought to my notice various aspect in this regard. So far as other petition being Writ Petition NO.2664 of 2005 is concerned, the learned counsel Mr. Madan also agrees to the suggestions of the Court that instead of adjudication of the Petition on the basis of interim order, it would be in the interest of the parties themselves to expedite the hearing of the complaint in the Industrial Court.

4. In view of this position, it is hereby directed that the Member, Industrial Court, Mumbai shall adjudicate the Complaint (ULP) No.415 of 2005 expeditiously after giving opportunity to both the parties to lead their evidence and documents, if any, so as to complete the adjudication within six months from the date of receipt of Writ of this Court. Pending adjudication in the Industrial Court the ad-interim

order in terms of prayer clause (a) in Writ Petition No.2664 of 2005 shall remain enforce. With this direction both Petitions are disposed of with no order as to costs.